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1  
2  
3 UNITED STATES DISTRICT COURT  
4  
5 NORTHERN DISTRICT OF CALIFORNIA  
6  
7 SAN FRANCISCO DIVISION

8 **IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION**

9 THIS DOCUMENT RELATES TO:

10 *Epic Games Inc. v. Google LLC et al.*, Case  
11 No. 3:20-cv-05671-JD

12 *In re Google Play Consumer Antitrust  
Litigation*, Case No. 3:20-cv-05761-JD

13 *In re Google Play Developer Antitrust  
Litigation*, Case No. 3:20-cv-05792-JD

14  
15 *State of Utah et al. v. Google LLC et al.*, Case  
16 No. 3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**STIPULATED ~~[PROPOSED]~~  
AMENDED SUPPLEMENTAL  
PROTECTIVE ORDER GOVERNING  
PRODUCTION OF PROTECTED  
NON-PARTY MATERIALS**

Judge: Hon. James Donato

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28 Nos.: 3:21-md-02981-JD; 3:20-cv-05671-JD;  
3:20-cv-05761-JD; 3:20-cv-05792-JD;  
3:21-cv-05227-JD

STIPULATED [PROPOSED] AMENDED SUPPLEMENTAL PROTECTIVE ORDER  
GOVERNING PRODUCTION OF PROTECTED NON-PARTY MATERIALS

1 WHEREAS, on May 20, 2021, the Court entered a Stipulated Protective Order Governing  
 2 Production of Protected Non-Party Materials (the “Non-Party Protective Order”) in the above-  
 3 captioned cases. *See* Case No. 3:21-md-02981-JD, Dkt. No. 44;

4 WHEREAS on July 20, 2021, the Court entered an Order Determining Cases to be  
 5 Related with respect to the case entitled *State of Utah, et al. v. Google LLC et al.*, Case No. 3:21-  
 6 cv-5227-JSC, which consolidated that case into MDL Case No. 2981 (the “Litigation”). The  
 7 Parties acknowledge that certain protective orders require amendment to govern the production  
 8 by and to the Plaintiff States;

9 WHEREAS on December 10, 2020, the Court entered a Stipulated Protective Order in the  
 10 following cases: Case No. 3:20-cv-05671-JD, Dkt. No. 110, approving Dkt. No. 106-1; Case No.  
 11 3:20-cv-05761-JD, Dkt. No. 117, approving Dkt. No. 109-1; Case No. 3:20-cv-05792; JD, Dkt.  
 12 No. 78, approving Dkt. No. 76-1, and Parties have concurrently submitted an amendment to that  
 13 Stipulated Protective Order to govern the production by and to the Plaintiff States (“Amended  
 14 Protective Order”);

15 WHEREAS, Section 11(a) of the Amended Protective Order states that its provisions  
 16 should not “be construed as prohibiting a Non-Party from seeking additional protections”;

17 WHEREAS, materials that Parties intend to produce in the Litigations may contain  
 18 information that is subject to contractual obligations to a Non-Party, including but not limited to  
 19 non-disclosure agreements between a Party and Non-Party, or may otherwise contain Non-Party  
 20 Protected Material (as defined herein);

21 WHEREAS, Parties have served subpoenas pursuant to Rule 45 of the Federal Rules of  
 22 Civil Procedure on Non-Parties;

23 WHEREAS, certain Non-Parties have expressed concerns regarding the production of  
 24 competitively sensitive information to Parties in the Litigations absent certain additional  
 25 protections beyond those set forth in the Amended Protective Order;

26 WHEREFORE, IT IS HEREBY ORDERED that documents or information disclosed or  
 27 produced by Non-Parties or by Parties to the extent such documents or information are designated

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as containing Non-Party Protected Material in connection with the Litigations shall be subject to the following provisions (the “Amended Supplemental Protective Order”):

1. GENERAL PROVISIONS

1.1 The definitions, terms and provisions contained in the Amended Protective Order shall be incorporated herein by reference as though fully set forth herein; provided, however, that in the event of a conflict between any definition, term, or provision of this Amended Supplemental Protective Order and any definition, term, or provision of the Amended Protective Order, this Amended Supplemental Protective Order will control with respect to such conflict.

1.2 The definitions, terms and provisions contained in this Amended Supplemental Protective Order shall apply only to those Discovery Materials designated as Non-Party Protected Material in accordance with this Amended Supplemental Protective Order, and nothing herein shall provide any rights or protections to the Parties to the Litigations beyond those set forth in the Amended Protective Order.

2. DEFINITIONS

2.1 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery in the Litigations as “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”

2.2 Non-Party Protected Material: sensitive Non-Party confidential information or documents, disclosure of which to another Party or Non-Party could create a substantial risk of serious harm to the Non-Party.

3. SCOPE

3.1 This Amended Supplemental Protective Order covers not only documents designated “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”, but also any information copied, excerpted, or summarized from documents with such designation and any testimony, conversations, or presentations by Counsel that might reveal information from documents with such designation. However, the protections conferred by this

Amended Supplemental Protective Order do not cover the following: (a) any documents or information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party for reasons not involving a violation of this Amended Supplemental Protective Order or the Amended Protective Order, including becoming part of the public record through trial or otherwise; and (b) any documents or information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the document or information lawfully and under no obligation of confidentiality to the Designating Party.

3.2 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

#### 4. DESIGNATION AND USE OF NON-PARTY PROTECTED MATERIAL

4.1 In order for materials produced in discovery to qualify for protection as “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”, the Designating Party must affix the legend “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to each page of any document for which the Designating Party seeks protection under this Amended Supplemental Protective Order;

4.2 Unless otherwise ordered by the Court or permitted by all implicated Non-Parties, a Receiving Party may disclose documents and information designated as “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to the following only:

(a) The Receiving Party’s Outside Counsel of Record in this action, as well as employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the documents or information for this litigation and who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A to the Amended Protective Order);

(b) State AGO Attorneys who have appeared on behalf of Plaintiff States in this litigation, who are actively prosecuting the Litigation, or to whom it is reasonably necessary to disclose the information for purposes of this litigation; State AGO Attorneys who have appeared will maintain a list of Attorneys as well as supervisors of support staff subject to

1 this section;

2 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
3 necessary for the Litigations and (2) who have signed the “Acknowledgment and Agreement to  
4 be Bound” (Exhibit A to the Amended Protective Order);

5 (d) The Court and its personnel;

6 (e) Stenographic reporters, videographers, and their respective staff,  
7 professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably  
8 necessary for these Litigations and who have signed the “Acknowledgment and Agreement to be  
9 Bound” (Exhibit A to the Amended Protective Order);

10 (f) The author or recipient of a document containing the information or  
11 custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing and Filing under Seal. A Party may not file in the public record in  
13 this action any Non-Party Protected Material. Non-Party Protected Material may be filed only  
14 under seal pursuant to a Court order authorizing the sealing of the specific Non-Party Protected  
15 Material at issue. A Party that seeks to file under seal any Non-Party Protected Material must  
16 comply with Civil Local Rule 79-5. In addition to the requirements of Civil Local Rule 79-5(e),  
17 the Party seeking to file under seal any Non-Party Protected Material should identify the Non-  
18 Party whose Non-Party Protected Material has been designated as “NON-PARTY HIGHLY  
19 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” and serve the supporting declaration  
20 on the Non-Party so that Non-Party has the opportunity to file a declaration establishing that all of  
21 the designated material is sealable pursuant to Civil Local Rule 79-5(e). If a Receiving Party’s or  
22 Non-Party’s request to file Non-Party Protected Material under seal pursuant to Civil Local  
23 Rule 79-5(e) is denied by the Court, then the Receiving Party may file the Protected Material in  
24 the public record pursuant to Civil Local Rule 79-5(e)(2), unless otherwise instructed by the  
25 Court.

26 4.4 Use of Non-Party Protected Material at Depositions. Except as may  
27 otherwise be ordered by the Court, any person may be examined as a witness at deposition and

1 may testify concerning Non-Party Protected Material to the extent such person was the author,  
 2 recipient, or custodian of the material, or otherwise possessed or had prior knowledge of such  
 3 material. For clarity,

4 (a) A present director, officer, agent, employee and/or designated Rule  
 5 30(b)(6) witness of a Non-Party may be examined and may testify concerning Non-Party  
 6 Protected Material, but to the extent a document is designated as NON-PARTY HIGHLY  
 7 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s  
 8 Protected Material, all such materials, of which such person did not have prior knowledge, should  
 9 be redacted prior to introducing any such document for examination;

10 (b) A former director, officer, agent, and/or employee of Non-Party  
 11 may be interviewed or examined and may testify concerning Non-Party Protected Material to the  
 12 extent such person was the author, recipient, or custodian of the material, or otherwise possessed  
 13 or had prior knowledge of such material, but to the extent a document is designated as NON-  
 14 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains  
 15 another Non-Party’s Protected Material, all such materials, of which such person did not have  
 16 prior knowledge, should be redacted prior to introducing any such document for examination;

17 (c) Any other witness may be examined at deposition or otherwise  
 18 testify concerning any document containing Non-Party Protected Material which appears on its  
 19 face or from other documents or testimony to have been received from, communicated to, or  
 20 otherwise made known to that witness as a result of any contact or relationship with the Non-  
 21 Party, but to the extent a document is designated as NON-PARTY HIGHLY CONFIDENTIAL –  
 22 OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s Protected Material, all  
 23 such materials, of which such person did not have prior knowledge, should be redacted prior to  
 24 introducing any such document for examination; and

25 (d) At deposition, any person other than (i) the witness, (ii) the  
 26 witness’s outside attorney(s), and (iii) any Person(s) qualified to receive documents designated as  
 27 NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY under this

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Amended Supplemental Protective Order shall be excluded from the portion of the examination concerning such information, unless the Non-Party or the witness appearing on behalf of the Non-Party whose Non-Party's Protected Material is at issue consents to that person's attendance. If the witness is represented by an outside attorney who is not qualified under this Amended Supplemental Protective Order to receive such information, then prior to the examination, the outside attorney shall be requested to sign and provide a signed copy of the "Acknowledgment and Agreement to be Bound" attached as Exhibit A to the Protective Order, and to confirm that he or she will comply with the terms of this Amended Supplemental Protective Order and maintain the confidentiality of information contained within documents designated as NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY. In the event that such outside attorney declines to sign the "Acknowledgment and Agreement to be Bound" prior to the examination, the Non-Party may seek a protective order from the Court, in a motion to which the Parties will not object, prohibiting such outside attorney from disclosing Non-Party Protected Material.

4.5 Use of Designated Material at Hearings. A Party must not disclose NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information, directly or indirectly, in an open hearing without prior consent from the Non-Party or without authorization from the court. If the disclosing party anticipates disclosing any NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information in any open hearing, the disclosing party must notify the Non-Party of its intent to disclose such material at least four (4) business days in advance of such disclosure, or, if such notice is not possible, as soon as is reasonably practicable, and describe the materials to be disclosed with reasonable particularity, so that the Non-Party has the opportunity to file an objection to such disclosure and establish that the materials to be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and the Court's standing orders. If such notice is not given or the Non-Party files such an objection, the Disclosing Party must request that the courtroom be sealed, and that only those authorized to review NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY



information remain present during the presentation of such material, unless the Court orders otherwise.

4.6 Use of Designated Material at Trial. Any Party that discloses any NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY materials on any trial exhibit list exchanged with an opposing Party, or that is disclosed to the Court, must disclose such materials to the implicated Non-Party no later than two (2) business days after such exchange or disclosure, and describe the materials with reasonable particularity, so that the Non-Party has the opportunity to file an objection to such disclosure and establish that the materials to be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and the Court’s standing orders. If such notice is not given or the Non-Party files such an objection, the Disclosing Party must request that the courtroom be sealed, and that only those authorized to review NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information remain present during the presentation of such material, unless the Court orders otherwise.

Dated: October 11, 2021

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18  
19  
20 **ORDER**

21 Pursuant to stipulation, it is so ordered.

22  
23 DATED: October 22, 2021

24   
HON. JAMES DONATO  
United States District Judge

25  
26  
27  
28 Nos.: 3:21-md-02981-JD; 3:20-cv-05671-JD;  
3:20-cv-05761-JD; 3:20-cv-05792-JD;  
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